

Remarks

Claims 1-13, 23, and 24 are pending in the present application. By this paper, claims 1, 23, and 24 are amended and claims 29-31 are added. Reconsideration of the claims is respectfully requested. No new subject matter is added by these amendments.

Claims 1-13, 23, and 24 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicant respectfully traverses this rejection and requests reconsideration because the pending claims recite statutory subject matter.

The Examiner asserts that the claims are directed to a judicial exception and further clarifies this basis of rejection: "as such, the claims must either have physical transformation ***and/or*** a useful, concrete, or tangible result." (emphasis added.) Presumably, the Examiner implies that there must be a practical application of the judicial exception to properly meet the 35 U.S.C. § 101 burden. In relevant part, MPEP 2106 IV.C.2 states:

"For claims including such excluded subject matter to be eligible for patent protection, the claim must be for a practical application of the abstract idea, law of nature, or natural phenomenon.

A claimed invention is directed to a practical application of a 35 U.S.C.

101 judicial exception when it:

(A) "transforms" an article or physical object to a different state or thing; ***or*** (B) otherwise produces a useful, concrete and tangible result. . ." (emphasis added).

It is an improper standard and unnecessary for the claims to meet both the physical transformation ***and*** the useful, concrete, and tangible result tests, as the Examiner's use of "and/or" indicates. According to MPEP 2106 IV.C.2., Applicant is only required to satisfy one of the "practical application" tests to meet the 35 U.S.C. § 101 burden.

The pending claims satisfy the "useful, concrete, and tangible result" test and therefore, represent statutory subject matter.

In regards to original claims 1, 23, and 24, the Examiner argues on pages 2 and 3 of the Office Action that the basis for asserting these claims as non-statutory: "merely forming dot product DP . . . wherein the dot product provides a number related to the probability that the test part that may have an unknown defect has the known defect . . . would not . . . constitute a tangible result, since . . . it constitutes a purely mathematical construct." Applicant traverses this rejection because the pending claims are drawn to statutory subject matter. The original claims recite "the dot product provides a number related to the probability that the test part that may have an unknown defect has the known defect in the second reference part." This identification of an unknown part defect represents a useful, concrete and tangible result. Additionally, Applicant has amended these claims to add "whereby the dot product number is relied upon to identify whether the test part has the known defect in the second reference part," thereby reinforcing the statutory character of these claims.

Additionally, claims 2-13 and 29 (which depend from claim 1), claim 30 (which depends from claim 23), and claim 31 (which depends from claim 24) are also patentable under 35 U.S.C. §101 for at least the reasons set forth above. Applicant respectfully request reconsideration of these claims.

Applicant does not acquiesce in the Examiner's characterizations of the art. For brevity and to advance prosecution, Applicant may not have addressed all characterizations of the art and reserve the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by Applicant to any of the Examiner's positions does not constitute a concession to the Examiner's positions. The fact that Applicant's comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. Applicant submits that all of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

CONCLUSION

For the foregoing reasons, Applicant believes that the Office Action of September 14, 2007 has been fully responded to. Consequently, in view of the above amendments and remarks, Applicant respectfully submits that the application is in condition for allowance, which allowance is respectfully requested.

The Commissioner is hereby authorized to charge the \$150.00 additional claim fee and any fee deficiency associated with the filing of this Paper to the Deposit Account of Applicant's assignee, Ford Global Technologies LLC, Deposit Account No. 06-1510.

Respectfully submitted,

DAVID GRAVEL

By 
Matthew M. Jakubowski
Reg. No. 44,801
Attorney for Applicant

Date: January 14, 2008

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238
Phone: 248-358-4400
Fax: 248-358-3351